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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,708	01/28/2002	Kay Hellig	1458.TT4978	7368
34456	7590	08/08/2005	EXAMINER	
TOLER & LARSON & ABEL L.L.P. 5000 PLAZA ON THE LAKE STE 265 AUSTIN, TX 78746			GUERRERO, MARIA F	
		ART UNIT	PAPER NUMBER	
			2822	

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/058,708	HELLIG ET AL.	
	Examiner	Art Unit	
	Maria Guerrero	2822	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 May 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 and 18-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 18 and 33 is/are allowed.
- 6) Claim(s) 1-7,9-13,19-25 and 27-32 is/are rejected.
- 7) Claim(s) 8 and 26 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. This Office Action is in response to the Amendment filed May 26, 2005.

Status of Claims

2. Claims 14-17 are canceled. Claims 1-13 and 18-33 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 4-5, 7, 19, 22-23, 25 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al. (US 6,614,079).

Lee et al. shows forming a gate structure (16) on a substrate (10); forming a dielectric spacer layer (nitride layer) over the semiconductor substrate and etching the dielectric layer without the use of a sacrificial forming spacer, to form L-shaped spacers (22)(Fig. 2C-2D, col. 7, lines 10-14, col. 8, lines 7-22). Lee et al. discloses the L-shaped spacers including a first L-shaped spacer adjacent to a first sidewall of the gate structure and a second L-shaped spacer adjacent to a first sidewall of the gate structure (Fig. 2D). Lee et al. teaches the dielectric spacer layer (nitride layer) thickness being

from about 30 to about 500 angstroms (col. 7, lines 14-18). Lee et al. shows anisotropically etching the dielectric spacer layer to form L-shaped spacers having vertical and horizontal portions varying in thickness (Fig. 2C-2D, col. 8, lines 7-22).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 2-3 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (US 6,614,079) in view of Haskell (US 4,818,714).

Lee et al. does not specifically show forming a liner oxide over the gate structure. However, Haskell discloses forming a liner oxide (50) on the gate structure (30) (Fig. 4-5, col. 8, lines 40-62). In regards to thickness ranges, these values would be optimized

trough routine experimentation because there is not evidence of criticality. In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In re Woodruff, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990). See MPEP § 716.02 - § 716.02(g).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Lee et al. reference by forming the liner oxide as taught by Haskell in order to provide an excellent conformal passivation layer for the gate structure.

5. Claims 9-13 and 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (US 6,614,079) in view of Nishizawa (US 6,613,686).

Lee et al. does not specifically show etching the dielectric spacer layer with a chemistry combination of CH₃F and O₂ with an inert gas. However, Nishizawa discloses etching silicon nitride using a chemistry combination of CH₃F and O₂ with an inert gas (Fig. 2 and 4, column 6, line 30 to column 7, line 50). In regards to parameter ranges, these values would be optimized trough routine experimentation because there is not evidence of criticality. In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In re Woodruff, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990). See MPEP § 716.02 - § 716.02(g).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Lee et al. reference by etching the dielectric spacer layer using the etch chemistry combination of CH₃F and O₂ with an inert gas as taught by Nishizawa in order to obtain better etch selectivity.

6. Claims 6 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (US 6,614,079) in view of Verma (US 5,716,880).

Lee et al. does not specifically disclose the dielectric spacer layer being silicon oxynitride. However, Verma discloses the spacers being made from a variety of materials including silicon oxide, silicon nitride and silicon oxynitride (col. 9, lines 35-65)

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Lee et al. reference by including the use of silicon oxynitride to form the dielectric spacer layer as taught by Verma because silicon nitride and silicon oxynitride are interchangeably used in semiconductor fabrication.

Allowable Subject Matter

7. Claims 8 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 18 and 33 are allowed.

Response to Arguments

8. Applicant's arguments filed May 26, 2005 have been fully considered but they are not persuasive. Claims 1-7, 9-13, 19-25 and 27-32 stand rejected.

9. Applicant argued that Lee et al. discloses forming sacrificial spacer layers overlying the dielectric layers prior to forming the L-shaped spacer. Applicant argued that Lee et al. shows the use of thick nitride spacers and a photoresist layer, both of which correspond to a sacrificial forming layer. However, Lee et al. shows the L-shaped spacers (22) being formed by selectively etching the dielectric layer 20 (Fig. 2C-2D, col.

8, lines 1-22). In addition, Lee et al. teaches that the photoresist **may be** placed and in the preferred etching process, Lee et al. describes selectively etching the dielectric layer (20) (there is not use of a sacrificial forming spacer).

10. In addition, the transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., > Invitrogen Corp. v. Biocrest Mfg., L.P., 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003) ("The transition comprising' in a method claim indicates that the claim is open-ended and allows for additional steps."); < Genentech, Inc. v. Chiron Corp., 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.); Moleculon Research Corp. v. CBS, Inc., 793 F.2d 1261, 229 USPQ 805 (Fed. Cir. 1986); In re Baxter, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); Ex parte Davis, 80 USPQ 448, 450 (Bd. App. 1948) ("comprising" leaves "the claim open for the inclusion of unspecified ingredients even in major amounts").

11. Furthermore, during patent examination, the pending claims must be "given *>their< broadest reasonable interpretation consistent with the specification." > In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). While the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their

terms reasonably allow. > In re American Academy of Science Tech Center, F.3d, 2004 WL 1067528 (Fed. Cir. May 13, 2004)(The USPTO uses a different standard for construing claims than that used by district courts; during examination the USPTO must give claims their broadest reasonable interpretation.) < This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) >; Chef America, Inc. v. Lamb-Weston, Inc., 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004). Therefore, the expression "without the use of a sacrificial spacer to form L-shaped spacers" has been interpreted as broadly as reasonably allow.

12. Finally, "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." In re Heck, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting In re Lemelson, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. Merck & Co. v. Biocraft Laboratories, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). See also Celeritas Technologies Ltd. v. Rockwell International Corp., 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998). Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In re Susi, 440 F.2d 442, 169 USPQ423 (CCPA 1971).

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria Guerrero whose telephone number is 571-272-1837.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amir Zarabian can be reached on 571-272-1852. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 27, 2005

Maria Guerrero
MARIA F. GUERRERO
PRIMARY EXAMINER